

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREN GILBERT,

Plaintiff,

v.

PRA ENTERPRISE, INC., et al.,

Defendants.

Case No. 1:22-cv-01278-AWI-BAM

**ORDER VACATING STATUS
CONFERENCE**

**ORDER TO SHOW CAUSE RE
SUPPLEMENTAL JURISDICTION**

On October 6, 2022, Plaintiff Darren Gilbert initiated this action against Defendants PRA Enterprise, Inc. dba Ryderz Restaurant & Lounge, Ramon Saavedra, and Margarita Nieto Villagomez. (Doc. 1.) The Complaint asserts claims for injunctive relief under the Americans with Disabilities Act of 1990 (“ADA”) and California Health and Safety Code and a claim for statutory damages under California’s Unruh Civil Rights Act (“Unruh Act”). (*Id.*) Defendants have not appeared in this action, and default has been entered against them. (Doc. 10.)

Based upon the recent Ninth Circuit opinion in *Vo v. Choi*, this Court will order Plaintiff to show cause why the Court should not decline to exercise supplemental jurisdiction over Plaintiff’s Unruh Act claim. *See* 28 U.S.C. § 1367(c); *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022) (holding the district court properly declined to exercise supplemental jurisdiction in a joint Unruh Act and ADA case). Accordingly, the status conference currently set for March 8, 2023, is **HEREBY VACATED.**

In the Unruh Act, a state law cause of action expands the remedies available in a private action. California, in response to the resulting substantial volume of claims asserted under the

1 Unruh Act and the concern that high-frequency litigants may be using the statute to obtain
2 monetary relief for themselves without accompanying adjustments to locations to assure
3 accessibility to others, enacted filing restrictions designed to address that concern. *Arroyo v.*
4 *Rosas*, 19 F.4th 1202, 1211–12 (9th Cir. 2021). These heightened pleading requirements apply to
5 actions alleging a “construction-related accessibility claim,” which California law defines as “any
6 civil claim in a civil action with respect to a place of public accommodation, including but not
7 limited to, a claim brought under Section 51, 54, 54.1, or 55, based wholly or in part on an alleged
8 violation of any construction-related accessibility standard.” Cal. Civ. Code § 55.52(a)(1).

9 Moreover, California imposes additional limitations on “high-frequency litigants,” defined
10 as:

11 A plaintiff who has filed 10 or more complaints alleging a construction-related
12 accessibility violation within the 12-month period immediately preceding the
13 filing of the current complaint alleging a construction-related accessibility
violation.

14 Cal. Civ. Proc. Code § 425.55(b)(1). The definition of “high-frequency litigant” also extends to
15 attorneys. See Cal. Civ. Proc. Code § 425.55(b)(2). “High-frequency litigants” are subject to a
16 special filing fee and further heightened pleading requirements. See Cal. Gov. Code § 70616.5;
17 Cal. Civ. Proc. Code § 425.50(a)(4)(A). By enacting restrictions on the filing of construction-
18 related accessibility claims, California has expressed a desire to limit the financial burdens
19 California’s businesses may face for claims for statutory damages under the Unruh Act. See
20 *Arroyo v. Rosas*, 19 F.4th at 1206-07, 1212. The Ninth Circuit has also expressed “concerns
21 about comity and fairness” by permitting plaintiffs to circumvent “California’s procedural
22 requirements.” *Vo v. Choi*, 49 F.4th at 1171. Plaintiffs who file these actions in federal court
23 evade these limits and pursue state law damages in a manner inconsistent with the state law’s
24 requirements. See generally, *Arroyo v. Rosas*, 19 F.4th at 1211–12; *Vo v. Choi*, 49 F.4th at 1171-
25 72.

26 In an action over which a district court possesses original jurisdiction, that court “shall
27 have supplemental jurisdiction over all other claims that are so related to claims in the action
28 within such original jurisdiction that they form part of the same case or controversy under Article

1 III of the United States Constitution.” 28 U.S.C. § 1367(a). Even if supplemental jurisdiction
2 exists, however, district courts have discretion to decline to exercise supplemental jurisdiction.
3 28 U.S.C. § 1367(c). Such discretion may be exercised “[d]epending on a host of factors”
4 including “the circumstances of the particular case, the nature of the state law claims, the
5 character of the governing state law, and the relationship between the state and federal claims.”
6 *City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 173 (1997).

7 According to the filings with this Court, Plaintiff Darren Gilbert appears to be a high-
8 frequency filer, with over 200 cases filed in this district within the last two years alone.

9 For these reasons, Plaintiff is ORDERED to show cause, in writing, no later than **March**
10 **21, 2023**, why the Court should not decline to exercise supplemental jurisdiction over Plaintiff’s
11 Unruh Act claim and related state law claims. In responding to the show cause order, Plaintiff is
12 further ORDERED to:

- 13 (1) identify the amount of statutory damages Plaintiff seeks to recover; and
14 (2) provide declarations from Plaintiff and Plaintiff’s counsel, signed under penalty of
15 perjury, providing all facts necessary for the Court to determine if each is a “high-frequency
16 litigant.”

17 Failure to respond may result in a recommendation to dismiss of the entire action without
18 prejudice. Fed. R. Civ. P. 41(b) (stating that dismissal is warranted “[i]f the plaintiff fails to ...
19 comply with ... a court order”); *see also Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403
20 F.3d 683, 689 (9th Cir. 2005). Further, an inadequate response will result in the Court
21 recommending that supplemental jurisdiction over Plaintiff’s Unruh Act claim be declined and
22 that the Unruh claim be dismissed pursuant to 28 U.S.C. § 1367(c).

23 IT IS SO ORDERED.
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25 Dated: February 28, 2023

26 /s/ Barbara A. McAuliffe
27 UNITED STATES MAGISTRATE JUDGE
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